BARRY T. SMITHERMAN, CHAIRMAN
DAVID PORTER, COMMISSIONER
CHRISTI CRADDICK, COMMISSIONER

COLIN K. LINEBERRY, DIRECTOR

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

Date: June 25, 2013 **Oil and Gas Docket No. 02-0278952**

NOTICE TO THE PARTIES

The attached document is a Proposal for Decision and recommended Final Order issued by the examiner(s) in this case. Under Section 1.141 of the Commission's General Rules of Practice and Procedure, we are required to circulate the document to each party or its authorized representative. This is only a proposal and is not to be interpreted as a final decision unless an official order adopting the proposal is signed and issued by the Commission.

Under Section 1.142 of the General Rules of Practice and Procedure (16 T.A.C. §1.142), you have the right to file a written statement disagreeing with the proposal and setting out your reasons for this position. This document is referred to as "Exceptions" and must be filed with the Docket Services Section of the Office of General Counsel (Room 12-123) within 15 days of the date above. You have the right to respond in writing to any exceptions filed by another party. This document is referred to as "Replies to Exceptions" and must be filed with the Docket Services Section of the Office of General Counsel (Room 12-123) within 10 days after the deadline for filing exceptions.

In addition to written exceptions and replies, the parties may file with the Commission a one page summary of the case. The summary shall be filed with the Commission **at the time exceptions are due**. The summary is specifically limited to one page and shall contain only information of record or argument based on the record. The summary shall not be submitted in reduced print. If the summary contains any material not of record, has reduced print, or exceeds one page (8-1/2" x 11"), the examiner(s) will reject the summary and it will not be submitted to the Commissioners for their review.

The summary shall contain the name of the party, the status of the party, the name and docket number of the case, the issue(s), the key facts, the legal principles involved (including proposed conclusions of law), and the action requested. (See enclosed form.)

In view of the due dates stated above, all parties are reminded that pleadings are considered filed only upon **actual receipt by the Docket Services Section of the Office of General Counsel** (Room 12-123). Furthermore, each pleading must be served upon all Parties of Record and a statement certifying such and giving complete names and addresses must be included. Exceptions and replies may not be filed by telephonic document transfer unless otherwise directed by the examiner(s). **An original plus THIRTEEN copies of exceptions, replies and summaries should be submitted to the Commission. PLEASE DO NOT STAPLE.** Further, a copy of these pleadings **must be submitted to each party. IN ADDITION, IF PRACTICABLE, PARTIES ARE REQUESTED TO PROVIDE THE EXAMINERS WITH A COPY OF ANY FILINGS IN DIGITAL FORMAT. THE DIGITAL FORMAT SHOULD BE LABELED WITH THE DOCKET NUMBER, THE TITLE OF THE DOCUMENT, AND THE FORMAT OF THE DOCUMENT.**

The proposal for decision, and all exceptions and replies will be submitted to the Commissioners for their consideration at one of their regularly scheduled conferences. The agenda for the scheduled conferences will be published in the *Texas Register* and posted in the office of the Secretary of State. The conferences are open meetings; you may attend and listen to the presentation of the case.

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Lorenzo Garza - RRC, Austin

CASE SUMMARY

PREPARED BY: STATUS:

EXAMINER(S):

DOCKET NO./CASE NAME:

ISSUE(S):

KEY FACTS:

LEGAL PRINCIPLES INVOLVED:

ACTION REQUESTED:

BARRY T. SMITHERMAN, *CHAIRMAN*
DAVID PORTER, *COMMISSIONER*
CHRISTI CRADDICK, *COMMISSIONER*

COLIN K. LINEBERRY, *DIRECTOR*
HEARINGS DIVISION

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

June 25, 2013

OIL & GAS DOCKET NO. 02-0278952

APPLICATION OF EOG RESOURCES, INC. FOR ITS KLOTZMAN LEASE (ALLOCATION), WELL NO. 1H (STATUS NO. 744730), EAGLEVILLE (EAGLEFORD-2) FIELD, DEWITT COUNTY, AS AN ALLOCATION WELL DRILLED ON ACREAGE ASSIGNED FROM TWO LEASES.

APPEARANCES:

APPLICANT:	**EOG RESOURCES, INC.**
Doug Dashiell, Attorney	"
Tim Samson, Geologist	"
Richard Ryan, Land Advisor	"
Joseph Guerrero, Petroleum Engineer	"
INTERVENORS:	**DEVON ENERGY PRODUCTION COMPANY, LP; PIONEER NATURAL RESOURCES USA, INC.; LAREDO PETROLEUM, INC.; AND BP**
Brian Sullivan, Attorney	"
Sandra Buch, Attorney	"
Brad Hall, Land Manager, Devon	"
PROTESTANTS:	**KATHERINE LARSON REILLY & MELANIE McCOLLUM KLOTZMAN**
Patrick Thompson, Attorney	"
Spencer Klotzman, Attorney	"
OBSERVER:	**FIFTY LAND OWNERS**
Patrick Oegerle, Attorney	"

OBSERVER:	**BURLINGTON RESOURCES OIL AND GAS COMPANY**
Jamie Nielson, Attorney	"
OBSERVERS:	**REPRESENTING:**
Mickey Olmstead, Attorney	Self
Errol J. Dietz, Attorney	Self
Sue E. Hilbrich, Mineral/Land Owner	Self
Will & Lucille Gips, Land Owners	Self
Wilfred & Barbara Konrad, Land Owners	Self
Alan & Iona Buchhorn, Land Owners	Self
Mr. & Mrs. Will Haun, Land Owners	Self
Michael Sheppard	Self
Robert D. Jowers, Attorney	Self
INTERESTED PARTY:	**TEXAS GENERAL LAND OFFICE:**
Bill Warnick, General Counsel	"
Louis Renaud, Deputy Commissioner	"
Robert Hatter, Director of Mineral Leasing	"
William Osborn, Attorney	"

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:	October 25, 2012
DATE OF NOTICE OF HEARING:	November 6, 2012
DATE OF HEARING:	December 3, 2012
HEARD BY:	Marshall Enquist, Hearings Examiner Richard Atkins, Technical Examiner
DATE RECORD CLOSED:	December 3, 2012
TRANSCRIPT RECEIVED:	December 17, 2012
PFD ISSUED:	June 25, 2013

STATEMENT OF THE CASE

By Form W-1 (Application for Permit to Drill, Recomplete or Re-Enter) signed July 16, 2012, EOG Resources, Inc. (hereinafter "EOG") applied for a drilling permit for its proposed Klotzman (Allocation) Well No. 1H in the Eagleville (Eagle Ford-2) Field in DeWitt County. The

application purported to form an 80-acre unit for the well composed of 40 acres from the Georgia Dubose-Glassell 516.569-acre lease and 40 acres from the Georgia Dubose-Pierce 304.97-acre lease.

Regarding the drilling permit application (Status No. 744730), the Commission received several letters supporting the application and several letters protesting the application. A July 20, 2012 complaint letter filed on behalf of Katherine Larson Reilly and Melanie McCollum Klotzman (hereinafter "Klotzman"), as well as other family members, disputed the legal sufficiency of the application and asserted that neither an allocation agreement or a production sharing agreement existed for the proposed well. In addition, the letter indicated that the subject leases do not allow for pooling other than gas pooling, which, stated another way, meant the subject leases do not have provisions to allow pooling for oil production.

The dispute resulted in the creation of Complaint File 2012-132. Representatives for the two sides responded to the Complaint with an exchange of letters and legal arguments. Hearings Director Colin Lineberry, by letter dated October 5, 2012, stated "At the request of either the complainants or applicant EOG, I will refer the matter to Docket Services to set an evidentiary hearing to allow both parties to present evidence and argument regarding whether, on the specific facts of this case, EOG has a sufficient good faith claim to authorize issuance of an RRC drilling permit for the proposed allocation well." This offer was answered by EOG through its representative Doug Dashiell on October 16, 2012, who stated "...EOG Resources, Inc. hereby requests that this matter be referred to Docket Services to set an evidentiary hearing on the application."

APPLICABLE LAW

Commission Statewide Rule 80(a) [TEX. ADMIN. CODE §3.80(a)] states "Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site." The "Attached Graphic" under Statewide Rule 80(a) includes a reference to the Form PSA-12 (Production Sharing Agreement Code Sheet), adopted to be effective September 12, 2011, 36 TexReg 5835.

MATTERS OFFICIALLY NOTICED

The examiners have taken Official Notice of Oil & Gas Docket No. 06-0262000: The Application of Devon Energy Production Co., L.P. for a New Field Discovery and to Adopt Field Rules for the Proposed Carthage (Haynesville) Field, Panola County, Texas.

The examiners have taken Official Notice of Complaint File 2012-132, Complaint of Katherine Larson Reilly and Melanie McCollum Klotzman, individually and as Sole Trustee of the Melanie McCollum Klotzman Exempt trust against EOG Resources, Inc., regarding the Klotzman

Lease, Well No. 1H, Eagleville (Eagle Ford 2) Field, De Witt County, Texas.; District 2.

The examiners have taken Official Notice of Drilling Permit No. 711168, issued to Devon Energy Production Co., LP on May 19, 2011 for its McRae-Haygood Allocation Unit, Well No. 12H in Panola County.

The examiners requested that the Manager of Drilling Permits provide a breakdown of permitted wells from April 27, 2010 to the date of the hearing. The examiners have Officially Noticed that, from April 27, 2010 to December 3, 2012, there were 18,335 permits approved for horizontal wells, which included 350 permits approved for Production Sharing Agreement wells and 55 permits approved for "allocation" wells.

DISCUSSION OF THE EVIDENCE

EOG RESOURCES, INC.

On July 16, 2012, EOG filed a Form W-1 to obtain a drilling permit for its proposed Klotzman (Allocation) Well No. 1H. EOG believes its permit application is the same as approximately 75 other allocation permits the Commission has granted over the last two and one half years, with one difference. In this singular instance, the requested permit is protested.

The proposed well would be on 80 acres, composed of 40 acres from the Georgia Dubose-Glassell 516.569-acre lease and 40 acres from the Georgia Dubose-Pierce 304.97-acre lease. The two leases were entered into in 1956. EOG states it has 100% of the determinable fee mineral estate in each lease. However, the subject leases do not grant pooling authority for oil.

EOG asserts that the Commission has granted permits for "allocation" wells in approximately 75 prior cases. EOG wishes to be treated the same as the prior applicants for allocation well permits. The prior allocation well permits granted by the Commission all involved operators that had 100% of the determinable fee interest in the relevant leases, and, in each prior case, the leases did not grant pooling authority. In each prior case, no notice was given to lessors.

EOG agrees there is no Commission rule for allocation permits. EOG relies on an April 21, 2010 letter written by Colin Lineberry, Director of the Hearings Section, which was a reply to the request of Devon Energy Production Co., L.P. that it be issued a permit for its Well No. 1H on the Taylor-Abney-Obanion (Allocation) Unit in the Carthage (Haynesville) Field, Harrison County, Texas. Director Lineberry's letter states:

> "I have reviewed the referenced W-1 and, based on information submitted and particularly the representation by applicant that it holds leases covering 100% of each tract traversed by the wellbore and that there are no unleased interests within 330 feet of any point on the wellbore, it appears that applicant has met the minimal good faith

claim standard necessary for issuance of a permit."

(see attached **Exhibit I**) EOG contends that the Lineberry letter was a ruling. EOG states that it relied on this ruling when it purchased the rights to the Eagleville (Eagle Ford-2) Field on the Georgia Dubose-Glassell 516.569-acre lease and the Georgia Dubose-Pierce 304.97-acre lease from Yates Energy Corp. EOG also contends that its application is fully in line with the above quote from the April 21, 2010 Lineberry letter in that its present application concerns leases in which EOG holds 100% of the determinable fee interest in each tract traversed by the applied-for well with no unleased interests within 330 feet of any point on the wellbore.

EOG further quoted from the April 21, 2010 Lineberry letter:

> "The Commission expresses no opinion as to whether the leases alone confer the right to drill across lease lines as contended by applicant or whether a pooling agreement or production sharing agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdiction, it appears that a 100 percent interest in each of the leases is a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commission requirements."

EOG is not aware of any Texas court cases decided since the April 21, 2010 Lineberry letter that have addressed this issue specifically.

The April 21, 2010 Lineberry letter continued:

> "The issuance of the permit is also not an endorsement or approval of the applicant's stated method of allocating production proceeds among component leases or units."

EOG does not seek Commission endorsement as to any particular method of allocating production. "Mr. Lineberry got it exactly right in his April 21 letter. He said payment of royalties is a contract matter between the lessor and the lessee and the proposed –and determining whether the proposed proceeds allocation comports with the leases is not a matter within the Commission's jurisdiction but a matter for the parties to the lease and if necessary a Texas court." Counsel for EOG, Transcript p. 116, lines 11-18.

The first exhibit offered into evidence by EOG was the pending Form W-1 application, with attached Form PSA-12, filed by EOG on July 16, 2012 (see attached **Exhibit II**). The application states that it is for an allocation well on two leases, with an internal Rule 37 exception required and that the applicant is its own offset in the two leases. As its own offset, EOG waives the Rule 37 exception as the well crosses the common leaseline between the Georgia Dubose-Glassell 516.569

-acre lease and the Georgia Dubose-Pierce 304.97-acre lease. In order to satisfy the 80-acre density rule for the Eagleville Field, 40 acres was taken from each of the two Georgia Dubose leases. EOG's landman read into the record a part of the assertions made on page 2 attached to the Form PSA-12 which sums up the application:

> The Klotzman Allocation No. 1-H wellbore will cross internal lease lines. Therefore a Rule 37 exception is requested. EOG Resources, Inc. is the operator of each of the leases involved in this application pursuant to authority in the oil and gas leases. EOG has all necessary real property and contractual rights to drill and produce the applied-for well and a legal right to develop and produce the minerals under all the acreage assigned to the well.

Transcript, p. 32, lines 13-21.

On June 20, 2012, four days after EOG's application for an "allocation" well was filed, the Klotzmans filed a protest with the Commission Drilling Permits Section noting that there is no production sharing agreement in place, or any other agreement with the Klotzmans, regarding the applied-for well. EOG agrees that there is no production sharing agreement in place and argues that such an agreement is not necessary.

By letter dated August 6, 2012 to Lorenzo Garza, RRC Manager of Drilling Permits, EOG attempted to explain that production sharing agreement wells require a sign-up of a minimum percentage of royalty owners whereas an allocation well does not.

> For a number of years, the Commission has accepted PSA permit applications such as the example cited by Mr. Gross (Permit No. 739924 for the EOG Stevenson Geren PSA No. 5H). At one time, the Commission required a PSA permit applicant to have a PSA in place with at least a 65% sign up percentage in order to process a PSA permit application. Beginning in the year 2010, as documented in the April 21, 2010 letter from Colin Lineberry attached as Exhibit B to my July 24, 2012 reply, the Commission has allowed for the issuance of Allocation Permits with no PSA whatsoever. The clear language of the Lineberry letter concludes that if a permit applicant has 100% leasehold interest in each tract traversed by the wellbore with no unleased mineral interest within the minimum spacing distance, the applicant has demonstrated a good faith claim to title for issuance of a drilling permit." [explanatory parenthetical added by the examiner]

EOG acknowledges that the Georgia Dubose leases do not contain pooling authority for oil and has never contended that the leases do contain such authority. The Georgia Dubose-Pierce 304.97-acre lease, at paragraph 13(a), grants pooling authority for gas but is silent as to pooling for oil. The Georgia Dubose-Glassell 516.569-acre lease does not grant pooling authority for either oil or gas. EOG attempted to obtain pooling authority from the Klotzmans, and entered into

negotiations with the Klotzmans prior to filing for the Klotzman (Allocation) Well No. 1-H. The negotiations have not been successful to the time of the hearing. EOG has proposed lease amendments to the Reillys and Klotzmans, including reasonable pooling terms used in other EOG leases. In exchange, EOG offered enhancements to surface use protections and additional compensation for surface use. In response, Mr. Spencer Klotzman informed EOG that pooling would not be authorized without an increase in royalty above the royalty fraction set out in the leases.

Both of the Georgia Dubose leases have a 1/8 (12.5%) royalty provision. Over the years, the heirs have sold portions of the right to receive royalty on portions of the leases. The larger Georgia Dubose 516.569-acre lease, as to royalty, has been effectively subdivided into three sub-tracts, labeled by EOG as Tract 1.1 (123.0 acres), Tract 1.2 (113.5 acres) and Tract 1.3 (291.3 acres). At hearing, the Klotzmans corrected the amount of royalty interest that EOG had attributed to the Klotzmans in each tract, but did not dispute the larger point EOG was trying to make. After correction, the original 12.5% royalty interest retained by the Klotzmans in Tracts 1.1 and 1.2 has been reduced to .07812499 (7.8%) and in Tract 1.3 to .109374998 (10.9%). EOG points out that, on a net revenue 8/8ths basis, with 100% as the total, this application is being opposed by an ownership interest of less than 11%.

EOG notes that EOG's existing Reilly Well No. IH is drilled entirely within the boundaries of the Georgia Dubose 516.569-acre lease, but crosses the three sub-tracts with differing royalty interests, and different royalty owners. According to EOG, this creates the same issues of allocating production that the applied-for Klotzman (Allocation) Well No. 1H would have.

EOG's Exhibit 13 is a tabulation of applied-for permits with the word "allocation" in the well name. EOG has found approximately 75 such permits. The exhibit is meant to show how the Commission has treated other operators based on the same representations that EOG made in its application. EOG notes that Notice of Application was not given to the lessors in any of the prior applications, just as notice was not provided to any lessors in the EOG application. The printout is from the Commission Online System made in the month of November, 2012, and shows that many of the wells with the word "allocation" in the well name are in the Approved Queue, while others are in other queues such as Mapping, Legal Exam, Engineering and Mapping Corrections.

The operators requesting allocation permits, with the number of permits in parentheses, are Apache (2), Classic (5), Crimson (1), Devon (22), Diamondback (2), El Paso E&P (1), EOG (1), Escondido (8), Exco (3), GMX (12), Halcon (1), Laredo Petro-Dallas (6), Laredo Petro (3), Paloma (2), Pioneer (1), PMO (3), and Shell Western (1). EOG believes that if the Commission places new requirements on the EOG application that were not placed on the prior 75 allocation well applications, it places the previously granted permits at risk.

If EOG could drill the entirety of the Klotzman lease acreage with allocation permits, as shown on its Exhibit 17, it calculates it would drill 197,980 feet of treatable lateral with wells spaced approximately 500 feet apart. By treatable lateral, EOG means the portion of a horizontal lateral that

could be completed through hydraulic fracturing. However, if EOG cannot use allocation wells, but is restricted to on-lease wells only, it would only be able to drill 149,097 feet of treatable lateral on the Klotzman lease acreage, as shown by its Exhibit 18. That would result in roughly 48,883 feet less of treatable lateral, which is equivalent to 10 or 11 horizontal laterals foregone. EOG calculates that allocation wells would produce 5 million more barrels of oil recovery than on-lease wells. The average recovery of an EOG Eagle Ford well is 450,000 BO after royalty (Oil Equivalent Net).

The Klotzmans and the GLO have alleged that the proposed allocation well will be in violation of Statewide Rules 26 and 27. EOG points out that Statewide Rule 26 regulates surface commingling of oil and/or gas produced from either two or more tracts of land producing from the same reservoir or two or more tracts of land producing from different Commission-designated reservoirs. EOG's proposed well will not surface commingle oil and/or gas. Statewide Rule 27 regulates commingling of gas in the same manner. EOG asserts that Statewide Rule 27 does not require measurement of oil and/or gas that is commingled underground in the same field before leaving two or more leases and being produced at the surface on a single lease.

In its written closing statement, EOG argued "The availability of allocation well drilling permits is essential for operators such as EOG to efficiently develop leases in unconventional plays that require horizontal drilling across multiple tracts in cases such as this where the leases do not authorize pooling and the lessees have exhausted reasonable efforts to reach agreement with lessors. The ability to permit and drill allocation wells will prevent the waste of millions of barrels of crude oil."

In closing, EOG makes five points. First, EOG believes the Commission standard for obtaining a production sharing agreement well or an allocation permit is a good faith claim. EOG asserts that it has presented the same good faith claim as seventeen other operators which have obtained or requested approximately 75 permits for "allocation" wells. EOG believes it has the legal right to drill the applied-for allocation well. Second, EOG believes the RRC has a statutory and legal duty to prevent waste and promote development of the State's oil and gas resources. Third, EOG does not believe the RRC has jurisdiction to determine royalty allocation or payments. Fourth, EOG believes there would be severely detrimental consequences if the RRC refused to grant production sharing agreement and allocation permits. There would be substantial waste of recoverable oil and gas, and a denial of mineral owners right to produce reserves from their lands. Fifth, EOG notes that operators have relied upon the RRC's issuance of production sharing agreement and allocation permits in developing their leases. If the RRC discontinues this practice, it would substantially harm those operator's plans and cause major economic loss to all mineral interest owners.

DEVON ENERGY PRODUCTION COMPANY, LP

Devon, as an Intervenor in the present docket, aligns itself with EOG. Devon did not present any argument or evidence in the hearing, but did file a lengthy Closing Statement and a Reply

Closing Statement. Devon's main points are summarized below.

Devon argues that the Klotzman/Reilly complaint asks the Commission to exceed its jurisdiction by interpreting the Klotzman/Reilly leases in a way that is contrary to existing oil and gas law and contrary to existing Commission practice. The complaint asks the Commission to find that EOG, owner of the fee simple determinable interest in the Klotzman leases, does not have the authority to drill its proposed well across lease lines. In Devon's view, the Klotzman's admission that EOG owns the leases is determinative of EOG's good faith claim to drill the well. "The Commission may not inquire further because to do so is to make a title/contract determination that is beyond the Commission's jurisdiction. The Examiners must recommend that the Klotzman/Reilly complaint be dismissed because the complaint requests an action that exceeds the Commission's jurisdiction." (Devon Closing Statement, pages 1-2).

According to Devon, the term "allocation well" is "... used to describe a well drilled across two or more leases and/or units with no pooling and no agreement among the royalty owners therein as to how production or the proceeds of production are to be allocated or shared." (Devon Closing Statement, page 2). In Oil & Gas Docket No. 06-0262000, Devon proposed that an allocation rule be included in a field rule. In that hearing, Devon contended that many of the existing pooled units formed for drilling vertical wells in the area of the Carthage (Haynesville) Field were odd-shaped and ill-suited for drilling horizontal wells of the length and orientation necessary to efficiently drain that field. Devon proposed the following field rule language:

> Operators shall be permitted to drill and complete horizontal wells that traverse one or more units and/or leases as long as that operator has a lease or other mineral ownership right to produce from each unit or lease. If such a well is not already subject to an agreement regarding the allocation of production, the following allocation formula will be presumed to constitute a fair and reasonable allocation of production from a well in this field and shall be utilized by the Commission in assigning acreage attributable to the separate units/leases traversed by the horizontal drainhole: an allocation of acreage and production to each of the units and/or leases traversed by and completed in the horizontal well based on the percent of said horizontal well from first take point to last take point that lies under each unit or lease.

(Devon Closing Statement, page 3). The Commission declined to adopt this field rule, concluding that the Commission did not have the authority to extend or modify leases or to determine ownership of oil and gas and how the proceeds from the sale of oil and gas should be apportioned. Devon, and EOG, now agree that the allocation of royalties is outside the Commission's jurisdiction.

However, after its Motion for Rehearing in Oil & Gas Docket No. 06-0262000 was denied on January 26, 2010, Devon appealed the Commission's findings to District Court. Devon also filed a well permit application for an Allocation Well, the Taylor-Abney-Obanion Allocation Well, in

which the proposed wellbore crossed three units. On April 21, 2010, the Commission's Director of the Hearing Section, Mr. Colin Lineberry, notified Devon that based on the representations in the application and the assertion that Devon held leases on each of the tracts crossed and that there were no unleased interests within 330 feet of any point on the wellbore, the Commission would process the application. Devon then filed a notice of nonsuit withdrawing the appeal in District Court.

The April 21, 2010 Lineberry letter notified Devon that based on the representation that Devon holds leases on each of the tracts crossed and that there are no unleased interests within 330 feet of any point on the wellbore, the Commission would process the permit application "...with the notation that the applicant has made a sufficient showing of a good faith claim to the right to produce the minerals under the proposed unit such that the good faith claim issue does not bar issuance of a permit." Devon asserts that there is no dispute that EOG met the standard for good faith claim to title that was set forth in the April 21, 2010 Lineberry letter concerning the Taylor-Abney-Obanion Well. Devon asserts that "The Commission's interests are satisfied by assurances that the applicant for a drilling permit has a good faith claim to the authority to explore for and produce minerals." (Devon Closing Statement, page 5).

Devon quotes Magnolia Petroleum Co. v. Railroad Comm'n, 170 S.W.2d 189, 191 (Tex. 1943) as to the standard for the Commission when title is questioned:

> "The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim of ownership in the property. If the applicant makes a reasonable satisfactory showing of a good-faith claim of ownership in the property, the fact that another in good faith disputes his title is not alone sufficient to defeat his right to the permit..."

Devon believes EOG's ownership interest in its proposed allocation well is the same as that claimed by Devon in its application for the Taylor-Abney-Obanion Allocation Well.

In Oil and Gas Docket No. 06-0262000, Devon submitted a letter written by Professor Ernest E. Smith opining whether Devon's leases provided authority to drill across multiple leases and/or pooled units. In a twelve-page letter opinion, Professor Smith concluded that horizontal wells may be drilled across lease and unit lines under the authority of the existing leases. As to Production Sharing Agreements, Professor Smith stated that such agreements are highly desirable in avoiding disputes over the allocation of royalties, but that the absence of a Production Sharing Agreement does not preclude the right to drill.

"As part of its conservation responsibilities, the Commission is responsible for issuing permits for the drilling of oil and gas wells. If an operator shows that the application for a drilling permit meets the requirements of the Commission's rules, the Commission is required to issue the permit.... The relationship between lessors and lessees is a private contractual relationship. The duties in that relationship are properly the province of the courts, not the Commission." (Devon

Closing Statement, pages 8-9).

In its Reply Closing Statement, Devon asserts that the closing statements of the Klotzmans and the GLO ignore the fact that a conveyance of an estate in land, such as an oil and gas lease, conveys the greatest estate to the grantee which is consistent with the language contained in the grant Day & Day Co., Inc. v. Texland Petroleum, Inc., 786 S.W.2d 667 (Tex. 1990). Neither the Klotzmans nor the GLO point to any lease provision that prohibits horizontal drilling across lease lines.

The Klotzmans cited the Commission's requirement of a 65% sign-up for a Production Sharing Agreement Well as evidence that the Commission will not permit wells without a Production Sharing Agreement. Devon argues that the Commission "...has simply determined that to be called a PSA well on the Form W-1, 65% sign-up is required. Wells with lesser or no sign-up can be permitted as Allocation Wells." (Devon Reply Closing Statement, page 3).

Devon disagrees with the Klotzman's assertion that the grant of the EOG Klotzman (Allocation) Well No. 1H would be inconsistent with Commission Statewide Rules 40 and 26. In regard to Statewide Rule 40, Devon notes that Rule 40 applies to pooled units, and that EOG does not claim to be pooling the leases involved. Further, Devon cites Browning v. Luecke, 38 S.W.3d 625 (Tex. App. - Austin, 2000 *writ denied*) as authority for the proposition that when pooling does not comply with lease provisions, the attempted pool fails, and there is no cross-conveyance of interests. Thus, the royalty owners must be paid on their share of the production from the well as determined by the production that can be attributed to each tract with reasonable certainty (Luecke, at 647). Devon further states the Luecke court did not find that the wells drilled across lease lines without pooling authority were illegal wells, rather the court found that royalties must be paid under the terms of the lease.

Rule 26, entitled "Separating Devices, Tanks, and Surface Commingling of Oil" governs surface commingling. EOG has not proposed surface commingling of production from the Klotzman (Allocation) Well with production from wells on other leases. Statewide Rule 10 governs downhole commingling, and only refers to commingling of two or more fields, which is not what EOG will be doing. Statewide Rules 10 and 26 do not apply to production from the proposed Klotzman (Allocation) Well No. IH.

Devon asserts that the Commission does not have the authority to interpret State leases and hear title disputes. The GLO has taken the position that its lease form for Relinquishment Act leases does not authorize allocation wells without the State's consent. The GLO further asks the Commission to stop issuing allocation well drilling permits without giving notice to lessors, and an opportunity to protest. Devon believes this would serve no useful purpose. The GLO already requires in its Rule 9.32 that its lessees file a copy of the RRC Form W-1 with plat five days before spudding the well. Under this rule, the GLO receives notice from its lessees of drilling permit applications. Devon suggests the GLO amend its own rules to require receipt of these documents

when filed at the Commission.

Devon also suggests that providing lessors an opportunity to protest drilling applications puts the Commission in the position of hearing title arguments it does not have the jurisdiction to decide. The Commission must grant a permit if the applicant makes a reasonable satisfactory showing of a good faith claim to ownership in the property, therefore providing notice and an opportunity to protest allocation wells merely invites lessors to take their arguments to the wrong forum and is not a good use of the Commission's limited resources.

TEXAS GENERAL LAND OFFICE

The Texas General Land Office ("GLO") appeared before the Commission and asserted that it and others have standing to appear at this hearing. The Commission has long recognized standing on the part of those who were not entitled, by rule, to standing, but could show that their interests were not aligned with their operator's interests.

The GLO has a pooling committee and is particular about how state lands are pooled. The GLO is also concerned that EOG will be downhole commingling. If the Commission grants an allocation permit, the Commission will, in effect, be granting an exception to Statewide rules 26 and 27, but without the notice provisions. If restrictions on surface commingling are so strict, then restrictions on downhole commingling should be equally strict.

EOG, by taking acreage from two different leases and combining that acreage, is effectively pooling, but does not call it pooling. If this is not pooling, then the General Land Office is not protected and cannot protect itself.

The GLO is the steward of 13 million mineral acres for the State of Texas. GLO lease forms do not permit pooling without its consent. Pooling applications are presented to a Pooling Committee for review. The Committee is composed of representatives of the GLO, the Office of the Attorney General, and the Governor's Office, and carefully reviews pooling requests in terms of dilution of the State's mineral interests. The GLO believes that any attempt to form an allocation unit involving State acreage without State consent would be legally infirm. This is particularly true for State Relinquishment Act mineral tracts in which the surface owner is an agent of the State in return for a partial royalty share in lease negotiations. Relinquishment Act tracts cover six million acres across the State. The GLO has a special lease form for such leases and the GLO considers that their lease form does not authorize "allocation wells" without the State's consent. If the Railroad Commission issues drilling permits for such wells without notice to Relinquishment Act surface owners, those owners cannot effectively act as agents and fulfill their duty to protect the State against unfair dilution.

The GLO asks that the Railroad Commission stop issuing "allocation well" permits without giving notice to lessors or Relinquishment Act surface owners, and affording them an opportunity

to protest. The 21 day procedure used in Statewide Rules 26 and 37 would be suited to this purpose and would enable development of an "allocation well" to proceed if the mineral owners are silent.

KLOTZMAN

Klotzman argues that the controlling issues in this case are legal. EOG does not have a good faith claim and cannot make a good faith claim. Issuance of the EOG permit would violate Commission orders related to horizontal wells, Statewide Rules 26 and 40, and seventy years of Texas jurisprudence.

EOG leans heavily on the April 21, 2010 letter from Director Colin Lineberry which stated "...based on information submitted and particularly the representation by applicant that it holds leases covering 100% of each tract traversed by the wellbore and that there are no unleased interests within 330 feet of any point on the wellbore, it appears that applicant has met the minimal good faith claim standard necessary for issuance of a permit." Klotzman points out that the April 21, 2010 letter from Colin Lineberry is a only a Staff opinion. The letter does not cite any decision or order of the Commission in support of the opinion expressed in the letter. In fact, there is no statute, Commission rule or Commission Final Order that authorizes the creation of "allocation wells".

Moreover, the April 21, 2010 Lineberry opinion letter was displaced by an October 5, 2012 Lineberry letter which noted a new situation had developed:

> "This is the first case of which I am aware in which a mineral owner has asserted, prior to the permitting of a well, that the specific terms of its leases bar an operator from having even a good faith claim to the right to drill a horizontal well across lease lines. In my view, the complainant's assertions cast sufficient doubt on the applicant's assertion of a good faith claim to preclude the administrative approval of the requested permit at this juncture. Accordingly, the referenced permit application will not be processed at this time.
>
> At the request of either the complainants or applicant EOG, I will refer this matter to Docket Services to set an evidentiary hearing to allow both parties to present evidence and argument regarding whether, on the specific facts of this case, EOG has a sufficient good faith claim to authorize issuance of an RRC drilling permit for the proposed allocation well." (emphasis added)

The Klotzmans attempted to negotiate with EOG for a higher royalty in exchange for pooling authority. EOG responded only with an offer to make enhancements to surface use protections and additional compensation for surface use. EOG later informed Klotzman that a higher royalty was "off the table". The Klotzmans next made a counter-offer which asked for a contractual agreement to drill a certain number of wells within a certain time in exchange for somewhat limited pooling rights. About two weeks before the hearing, EOG informed the Klotzmans that even the proposal

for a drilling commitment was "off the table". The negotiations on the Klotzman side were conducted by Spencer Klotzman, attorney, who is a relation of the Reilly and Klotzman families.

Attorney Klotzman grew up in a family of oil and gas operators and focused on oil and gas law in law school. As a result of his practice, he is familiar with drilling in the Eagle Ford in DeWitt County. Mr. Klotzman's experience has been that not every foot of an Eagle Ford horizontal well is equivalent to every other foot. Moving from the northwest to the southeast, gas increases, and the gas/oil ratio changes. Of two wells drilled on the northwest-southeast axis, one below the other, one may have a GOR of 1400 and the more southerly well may have a GOR of 3000. Mr. Klotzman does not believe EOG will have uniformity of production over the length of a horizontal lateral, that is, contrary to EOG's assertion, Klotzman does not believe each discrete foot of wellbore will produce as much oil as any other discrete foot. That leads to the problem of accounting for production before it leaves the lease. EOG and the Klotzmans have not agreed on a method of accounting for production from the separate leases.

Another factor working against EOG's "one foot of wellbore equals any other foot" theory of production uniformity is the fact that many of the hypothetical wells that EOG has mapped terminate near a major fault that has 300 to 400 feet of throw. The portion of those wells that terminate near the fault should be in the oiliest rock, raising questions as to whether more oil is produced from one end of the lateral than the other.

Mr. Klotzman argued that EOG cannot make a good faith claim to drill the applied-for well by virtue of the fact that the leases do not allow oil pooling. EOG cannot have it both ways, on the one hand claiming to have all leasehold ownership, while on the other hand admitting that it does not own oil pooling authority, and then attempting to combine acreage from two different leases. EOG does not having pooling authority for oil in either the Georgia Dubose 516.569-acre lease or the Georgia Dubose 304.97-acre lease. It lacks the authority to combine 40 acres from one lease with 40 acres from another lease to form a drilling unit which is in reality an 80-acre pooled unit.

The Klotzmans do not believe that the mere use of the word "allocation" in a well title is sufficient to obscure the fact that what is really going on is unauthorized pooling. Under cross-examination, EOG's witness provided an explanation of what the word "allocation" means in a well title:

Q. [By counsel for Klotzman, Patrick Thompson] What is your understanding of what it means about the well when the word "allocation" appears in the name of the well?

A. [By Land Advisor for EOG, Richard Ryan] That it's a well that is drilled without pooling provisions, adequate pooling provisions in at least one or more of the leases involved in the well.

Transcript, p. 109, lines 17-22.

In its permit application, EOG stated that it "...has all necessary real property and contractual rights to drill and produce the applied-for well and the legal right to develop and produce the minerals under all acreage assigned to the well." Klotzman notes that EOG did not obtain pooling authority from the Klotzmans and Reillys, which means EOG does not have "...all necessary real property and contractual rights..." to drill its proposed well.

EOG admits that the two Dubose leases do not grant pooling authority for oil. Consequently, EOG does not have the authority to combine 40 acres from one lease with 40 acres from the other lease into an eighty acre pooled unit. It lacks a good faith claim to the right to form an eighty acre pooled unit. Calling a well on the combined acreage an "allocation" well does not change the facts or the rights of the parties. EOG does not have a good faith claim to drill the applied-for well and the applied-for permit should be denied.

Klotzman also notes that EOG and Devon discuss "allocation wells" as if they were an established part of Texas oil and gas law. They are not. There is no Commission rule or Commission Order defining or authorizing "allocation well permits". EOG and Devon refer to the April 21, 2010 staff letter written by Colin Lineberry as authority for issuance of an "allocation well' permit, not merely as a statement applicable to the drilling permit Devon sought at the time, but as a statement of how all similar applications should be evaluated and processed. EOG and Devon read the April 21, 2010 Lineberry letter as an agency "statement of general applicability". However, under Texas law, agency "statements of general applicability" must be promulgated as rules.

The Texas Administrative Procedure Act defines a "rule" as "a state agency statement of general applicability the (i) implements, interprets or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Tex. Gov. Code §2001.003(6). EOG and Devon depend upon the April 21, 2010 Lineberry letter being treated as a rule even though it has not been formally adopted as a rule. That does not comply with Texas law.

The Texas Supreme Court stated, "A presumption favors adopting rules of general applicability through the formal rule-making procedures the APA sets out. These procedures include providing notice, publication and public comment on the proposed rule. The process assures notice to the public and affected persons and an opportunity to be heard on matters that affect them. When an agency promulgates a rule without complying with the proper rule-making procedures, the rule is invalid." El Paso Hospital District v. Texas Health and Human Services Commission, 247 S.W.3d 709 (Tex. 2008).

EOG claims that substantial waste will occur on the Klotzman leases if EOG is not allowed to drill the applied-for well and numerous additional wells on the Klotzman acreage. This allegation is absurd. EOG has only to reach an agreement with the Klotzmans for the grant of pooling authority in its leases and then there would be no barrier to the drilling of the very wells EOG seeks.

In its Closing Statement, EOG remarked that "The availability of allocation well drilling

permits is essential for operators such as EOG to efficiently develop leases in unconventional plays that require horizontal drilling across multiple tracts in cases such as this *where the leases do not authorize pooling and the lessees have exhausted reasonable efforts to reach agreement with lessors.*" [Closing Statement of EOG Resources, page 6.] The Klotzmans suggest that this raises several questions. First, who gets to decide when "...lessees have exhausted reasonable efforts to reach agreement with lessors"? Second, why does EOG include the qualification that allocation wells should not be permitted until after exhaustion of reasonable efforts if EOG believes its leases alone confer the right to drill? Third, where does the idea come from that the Commission can step in and permit development of acreage despite the inability of lessor and lessee to reach an agreement on terms? The MIPA has a requirement that an applicant must make a "fair and reasonable" offer to pool to the other party before pursuing a remedy at the Commission, but EOG is not employing the MIPA in this case. EOG is employing a procedure that it and other operators invented, without the adoption of necessary rules or legislation. EOG does not have the option of circumventing limitations in its leases by simply inventing new procedures at the Commission.

EOG and Devon rely heavily upon a July 23, 2009 opinion letter written by Professor Ernest Smith. In the letter, Professor Smith never asserts that an operator, with no authority to pool, has the right to drill a horizontal well that will cross lease lines. In fact, Professor Smith limits his opinion to the circumstance in which an operator does have the authority to pool.

Professor Smith begins his letter by stating he has been asked to make certain assumptions, which include the following: "...please assume that the units in question are validly formed and pool gas rights to all depths from 'grass roots to the center of the earth'....further assume the (i) the leases pooled grant a fee simple determinable to the lessee/operator with the right to pool..." Professor Smith never states that the use of horizontal technology should be viewed as giving an operator the right to override the mineral owner's reservation of pooling authority.

At the close of his letter, Professor Smith states again that his opinions rely on the existence of the operator's pooling authority. "This conclusion has assumed a traditional pooling clause that has not been amended or modified in any way." Smith letter at page 11.

Professor Smith acknowledges that the court in Luecke rejected the argument that the availability of horizontal drilling technology and the "prudent operator rule" excused the operator's compliance with the "express pooling limitations" in the lease. The Luecke court held that the drilling of the subject well violated the lease and Professor Smith acknowledged that fact.

EOG and Devon read too much into the statement "The failure of the parties to reach any agreement on ownership, much less how royalty is to be divided once production is obtained, does not override the lessor's right to drill." See generally Ernest E. Smith & Jacqueline L. Weaver, Texas Oil and Gas Law, section 2.3(A) (2nd ed. 2009 update)" Smith letter at 8. The "parties" referred to in that sentence are the mineral cotenants. The citation that follows it is a citation to that portion of the Smith & Weaver treatise that explains the fact that "A lessee's right to drill and

develop mineral land is not dependent on all cotenants having joined in the oil and gas lease." Smith & Weaver §2.3[A]. The Klotzmans agree that not all mineral cotenants must join a lease to give the lessor the right to drill. However, it should also not be in dispute that when a lease is issued, the lessee's rights are limited to the rights conveyed in the lease. In the present case, the lessee's rights are limited by the fact that no mineral owner has given EOG the power to pool the subject leases.

The Professor Smith letter does not support EOG or Devon's position in the present case because this case is about whether the Commission should issue a permit. In his letter, Professor Smith never considers the permitting issue and, in fact, states in his letter that he has followed Devon's instruction that "it is not necessary to consider the need for regulatory approvals" when responding to the questions presented. Smith letter at pages 1-2.

EOG claims that the owners of 100% of the working interest and 89% of the revenue interest in the two leases do not object to this application. These numbers are irrelevant. This case is about what rights were or were not conveyed by the leases. The only relevant number in this case is that the owners of 100% of the right to grant pooling authority have not granted pooling authority.

EOG and Devon also assert repeatedly that allocation of royalties is not the job of the Commission. It is unclear to the Klotzmans why EOG and Devon repeatedly make this argument as the Klotzmans are not requesting that the Commission allocate any royalties. The Klotzmans are protesting the issuance of a drilling permit to an operator that lacks the legal authority to drill its applied-for well.

In its Closing Statement, Devon argues that the lessors are better protected by wells that cross lease and unit lines than by separate wells. The Klotzmans submit that they, as lessors, are better protected by allowing them, the Klotzmans, to negotiate the terms under which the lessee may drill a well across a line that separates two leases which lack pooling authority.

The Klotzmans request that the Commission deny EOG's application for its proposed Klotzman Lease (Allocation) Well No. 1H. EOG does not presently have the authority to drill the well across leaselines. EOG does not have a good faith claim to drill the well.

EXAMINERS' OPINION

This docket has generated a great deal of argument from EOG, Devon, the Klotzmans and the Texas General Land Office. At the heart of all the argument, there is a single issue. Does EOG have a "good faith claim" to drill its applied-for Klotzman (Allocation) Well No. 1H on an 80 acre drilling unit composed of 40 acres taken from the Georgia Dubose-Glassell 516.569-acre lease and 40 acres from the Georgia Dubose-Pierce 304.97-acre lease?

The Protestants, the Klotzmans, assert that the two Dubose leases do not grant pooling authority for oil, and that EOG therefore lacks a "good faith claim" to pool the two 40-acre tracts into

one 80-acre drilling unit. EOG agrees that its leases do not grant pooling authority for oil, but responds that it is not pooling. It is EOG's position that it is instead taking 40 acres from each of two leases in order to form an 80-acre drilling unit for an "allocation" well.

The examiners find no Texas statute, Commission Statewide Rule or Commission Final Order authorizing "allocation" wells. There is no Commission form on which to apply for "allocation" wells. All permits for "allocation" wells have been filed on a Form PSA-12, a form adopted by the Commission effective September, 2011, which is used to file for Production Sharing Agreement well permits. Apparently, prior applications for "allocation" wells have been routinely administratively granted. There has been no notice to potentially affected parties and there has been no investigation by the Commission as to the facts of the applications.

The examiners have taken Official Notice of the number of horizontal well permits granted between April 27, 2010 and the date of the hearing on December 3, 2012. Those numbers differ from the numbers provided by EOG, as the EOG numbers counted all wells with the word "allocation" in their name, whether they were actually approved or not. Between April 27, 2010 and December 3, 2012, the Commission granted 18,335 permits for horizontal wells, which included 350 Production Sharing Agreement wells and 55 "allocation" wells. Thus, for that time period, approximately 2% of all horizontal well permits granted were Production Sharing Agreement wells and approximately 0.3% (three tenths of 1%) were "allocation" well permits.

As its authority for the Commission's issuance of permits for "allocation" wells, EOG cites a letter written by Colin Lineberry, at that time Director of the Hearings Section, on April 21, 2010. That letter, in its first paragraph, states:

> I have reviewed the referenced W-1 and, based on information submitted and particularly the representation by applicant that it holds leases covering 100% of each tract traversed by the wellbore and that there are no unleased interests within 330 feet of any point on the wellbore, it appears that applicant has met the minimal good faith claim standard necessary for issuance of a permit. (emphasis added)

EOG relies on this statement, and other statements within the letter, to the effect that "...it appears that a 100% interest in each of the leases is a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission...", as well as "For the foregoing reasons, I am returning the application to the Permitting Section for processing with the notation that the applicant has made a sufficient showing of a good faith claim to the right to produce the minerals under the proposed unit such that the good faith claim issue does not bar issuance of a permit."

EOG states that it has met the same standard as all prior applicants and wishes to be treated the same as all the prior applicants for "allocation" well permits. However, all of the prior applicants for "allocation" well permits received administrative approval, primarily because there were no protestants, which in turn was primarily because notice of the applications was not provided to

affected parties, such as the lessors. Unlike all prior applicants, EOG has drawn a protest from knowledgeable affected parties, the Klotzmans and the Texas General Land Office, who raise serious doubts about the legality of the Commission's grant of "allocation" well permits in the absence of proof of pooling authority. Thus, EOG does not stand on the same ground as the prior applicants that received administrative approval, but instead finds itself in a contested hearing, the first heard at the Commission regarding an "allocation" well permit.

EOG relies on part of the language in the April 21, 2010 Lineberry letter, but ignores other language, such as Mr. Lineberry's statements that

> "The Commission expresses no opinion as to whether the leases alone confer the right to drill across leaselines as contended by applicant or whether a pooling agreement or production sharing agreement is also required.....Issuance of a permit is also not an endorsement or approval of the applicant's stated method of allocating production proceeds among component leases or units...This letter reflects the opinion of the undersigned, based on my understanding of relevant statutes, case law, Commission rules and current Commission policy and procedure. The statements in this letter are not, and should not be construed as, a final opinion or decision of the Railroad Commission."

Much of this cautionary language is now attached twice, at the header and in the "Remarks" section, of the Form W-1 Online Filing for any "allocation" well. (see **Exhibit III**, the Form W-1 application of Devon Energy Production for its McCrae-Haygood Allocation Unit, Permit # 711168)

Mr. Lineberry was, at that time the subject letter was written, the Director of the Hearings Section of the Office of General Counsel, and is now the Director of the Hearings Division. He was, and is, a member of the Commission staff. Staff opinions do not carry the authority of a Commission Final Order. Only an Order signed by the Commissioners carries any authority, and even that is limited to the scope of the Commission's authority.

The April 21, 2010 letter was written to a single individual, Brian Sullivan in his capacity as counsel for Devon, to address a very specific issue which was delineated in the caption line of the letter: W-1 of Devon Energy Production Co., L.P. ("applicant") for its proposed Well No. 1H, Taylor-Abney-Obanion (allocation) Unit, Carthage (Haynesville Shale) Field, Harrison County, Texas (RRC Status # 692453). Despite the final sentence in the letter that "The statements in this letter are not, and should not be construed as, a final opinion or decision of the Railroad Commission", a few attorneys and operators have assumed the risk of using the letter as though it were a final opinion or decision of the Railroad Commission.

The fact that only the Commissioners speak for the Commission (and that only the Commissioners can delineate Commission policy) is certainly known to counsel for EOG and Devon, as they are among the most experienced oil and gas attorneys practicing before the Commission. Those attorneys and operators who have chosen to rely upon the April 21, 2010

Lineberry letter as authority for all "allocation" well permits now stand unsupported by statute, Commission Rule or Commission Final Order.

In his opening statement, EOG's counsel made the startling claim that "...essentially what you will find is that our leases are no different than anybody else's leases. These are 1956 leases, for example, but they don't have pooling authority. None of the other allocation permits have pooling authority. If they did we wouldn't be here. We would be forming pooled units." Transcript, page 17, lines 3-9. (emphasis added). The preceding underlined statement, to the effect that "None of the other allocation permits have pooling authority", is an incorrect interpretation of the facts surrounding the grant of the initial "allocation" well permit and throws a cloud of doubt on all other granted "allocation" well permits.

The April 21, 2010 Lineberry letter which removed the bar to the grant of the first "allocation" well permit, for the Taylor-Abney-Obanion (allocation) Unit, Well No. 1H, noted that Devon Energy Production had "...met the minimal good faith claim standard necessary for issuance of a permit". This statement was based, at least in part, on information contained in the Production Sharing Description provided by Devon. The Production Sharing Statement indicated that the well was to be drilled on acreage taken from the 491.66-acre W.B. Taylor "A" Unit, the 451.15-acre C.M. Abney "A" Unit and the 576.68-acre O'Banion Unit. These were existing pooled units which had previously been accepted as pooled units by the Commission. The remarks section of the online application states "This well is being drilled on a drilling unit composed of three pooled units. Devon is the operator of each of the three units pursuant to authority in the oil and gas leases." (emphasis added) Therefore, Devon itself acknowledged that the application concerned joining existing pooled units. Given that the "allocation" tract was comprised of parts of three existing pooled units, Devon must have had pooling authority in each of the component leases.

That is not the situation in the present case, in which both sides agree the subject leases do not grant pooling authority for oil. As asserted by the Klotzmans, merely changing the name of a well, and describing it as an "allocation" well, does not change the facts or the rights of the parties. The Klotzmans state that the Georgia Dubose leases at issue in this hearing do not provide pooling authority for oil and that this is a property right the Klotzmans have retained. EOG agrees that the Georgia Dubose leases do not provide pooling authority for oil. Under these circumstances, EOG cannot pool the two 40-acre tracts from the separate Georgia Dubose leases into an 80-acre drilling unit for oil. "Absent the use of the Mineral Interest Pooling Act, a lessee has no power to pool the leased estate with other land unless the lessor has expressly authorized it to do so. Similarly, it has no power to pool any mineral interest owned by the lessor except the interest covered by the pooling clause." 1 SMITH & WEAVER, TEXAS LAW OF OIL AND GAS, §4.8(B)(2) (Matthew Bender & Company, 2012).

EOG asserts that pooling authority is unnecessary in this application, as it is not pooling. However, EOG affirmatively states that it is taking 40 acres from one lease and combining it with 40 acres from another lease in order to form an 80 acre drilling unit to drill its proposed horizontal well. "Pooling occurs when tracts from two or more leases are combined for the purpose of drilling

a single well." 1 SMITH & WEAVER, TEXAS LAW OF OIL AND GAS, §4.8 (Matthew Bender & Company, 2012). "Pooling, or a pooled unit, will describe the joining together of small tracts or portions of tracts for the purpose of having sufficient acreage to receive a well drilling permit under the relevant state or local spacing laws and regulations..." 1 BRUCE M. KRAMER & PATRICK H. MARTIN, THE LAW OF POOLING AND UNITIZATION, §1.02 (Matthew Bender & Company, 2012). "Although the terms "pooling" and "unitization" are frequently used interchangeably, more properly "pooling" means the bringing together of small tracts sufficient for the granting of a well permit under applicable spacing rules..." WILLIAMS AND MEYERS (ABRIDGED), OIL AND GAS LAW §901 (Matthew Bender & Company, 1975). EOG's denial that it is pooling is untenable. Its actions are the definition of pooling.

Texas courts have repeatedly stressed the importance of express pooling authority in a lease. "A lessee's authority to pool is derived solely from the terms of the lease; a lessee has no power to pool absent express authority." Browning Oil Co., Inc. v. Luecke, 38 S.W.3d 625, 634 (Tex. App. - Austin, 2000, pet. denied). See also Southeastern Pipe Line Co. v. Tichacek, 997 S.W.2d 166, 170 (Tex. 1999); Jones v. Killingsworth, 403 S.W.2d 325, 328 (Tex. 1965).

Further, the Commission has no authority, by Final Order or rule, to legitimize permits for "allocation" wells insofar as they are wells composed of leased acreage lacking pooling authority. "It is thought to be fundamental that the rules and regulations of the Railroad Commission cannot have the result of effecting a change or transference of property rights" Whelan v. Placid Oil, 273 S.W.2d 125, 130 (Tex. Civ. App. - Texarkana, 1954, writ ref'd n.r.e.), citing Mueller v. Sutherland, 179 S.W.2d 801, 808 (Tex. Civ. App. - El Paso 1943, writ ref'd w.o.m.). "...the acts of the Railroad Commission cannot be said to operate effectively to extend the restrictive terms of a lease. The orders of the Railroad Commission cannot compel pooling agreements that the parties themselves do not agree upon. The Railroad Commission has no power to determine property rights." Jones v. Killingsworth, 403 S.W.2d 325, 328 (Tex. 1966) (emphasis added). See also Ryan Consolidated Petroleum Corp. v. Pickens, 285 S.W.2d 201 (Tex. 1955); Magnolia Petroleum Co. v. Railroad Commission, 170 S.W.2d 189 (Tex 1943); Nale v. Carroll, 289 S.W.2d 743, Tex. 1956). The limited exception to the above-cited authority is the Mineral Interest Pooling Act, but, in the present hearing, EOG is not invoking the M.I.P.A.

The above-cited authority also addresses a problem pointed out by the Klotzmans. EOG stated that the availability of allocation well permits was essential in cases "...where the leases do not authorize pooling and the lessees have exhausted reasonable efforts to reach agreement with lessors." The Klotzmans do not believe EOG or any other operator "...has the option of circumventing limitations in their leases by simply inventing new procedures at the Commission", particularly without the adoption of new legislation and proper rulemaking. The Commission has broad authority to prevent waste, but that authority does not extend to transferring a property right from lessor to lessee. As stated in Jones v. Killingsworth, supra, "The orders of the Railroad Commission cannot compel pooling agreements that the parties themselves do not agree upon." In the present case, pooling authority for oil is a property right retained by the Klotzmans. "It is thought to be fundamental that the rules and regulations of the Railroad Commission cannot have the result

of effecting a change or transference of property rights." Whelan, supra. Simply put, the Commission does not have the authority to grant the drilling permit requested by EOG, as that drilling permit would effectively strip the Klotzmans of a property right they still own (pooling authority for oil) and transfer it to EOG.

Applications for "allocation" well permits are all remarkably similar. In its "Attachment to Form W-1 Application" for the Taylor-Abney-Obanion (Allocation) Well No. 1H, the first "allocation" well permit granted, Devon made the following statement: "Devon has all necessary real property and contractual rights to drill and produce the applied-for well and the legal right to develop and produce the minerals under all the acreage assigned to the well." Since that time, all other operators filing for "allocation" well permits have slavishly followed this language without considering its meaning.

In the present application, EOG stated, "EOG has all necessary real property and contractual rights to drill and produce the applied-for well and the legal right to develop and produce the minerals under all the acreage assigned to the well." That statement has been shown to be false. As the Klotzmans have alleged and as EOG has agreed, the Georgia Dubose leases do not grant pooling authority for oil. Consequently, EOG does not have "...all necessary real property and contractual rights to drill and produce the applied-for well...".

The Klotzmans noted that EOG and Devon refer to "allocation" wells as though they are an established part of Texas oil and gas law. The Klotzmans note that they are not and the examiners agree. "Voluntary pooling is accomplished either by executing a community lease or by the lessee's exercising the pooling authority set out in the oil and gas lease. Compulsory pooling is effectuated through order of the Railroad Commission. 457". (footnote 457 states "Refer to Chapter 12 of this treatise.", which refers to the Mineral Interest Pooling Act.) 1 SMITH & WEAVER, TEXAS LAW OF OIL AND GAS, §4.8(B) (Matthew Bender & Company, 2012). The present application is not based on a community lease, does not exercise pooling authority set out in the leases, and is not an application pursuant to the MIPA.

EOG presents the Commission with a false dichotomy: an argument that the only choice is between lease wells on the one hand or "allocation" wells on the other hand. There is a third choice which EOG has worked hard to ignore and avoid: negotiation in good faith with the lessors for their retained property interest, which is pooling authority for oil. The acquisition of this property right would provide EOG the same developmental flexibility afforded by the use of "allocation" wells. If EOG chooses not to negotiate to obtain a property right it does not have, it cannot obtain relief at the Commission by asking the Commission to do what it has no authority to do, that is, transfer that same property right from lessor to lessee.

The examiners recommend that the application of EOG for its Klotzman (Allocation) Well No. 1H in the Eagleville (Eagle Ford-2) Field in DeWitt County be dismissed for lack of proper pooling authority and consequent lack of a good faith claim to drill the proposed well.

FINDINGS OF FACT

1. At least ten (10) days notice of the hearing in this docket was sent to all parties entitled to notice. EOG Resources, Inc. ("EOG") appeared at the hearing and presented evidence and testimony. Katherine Larson Reilly and Melanie McCollum Klotzman (the "Klotzmans") appeared at the hearing and presented evidence. Intervenors Devon Energy Production Company, LP; Pioneer Natural Resources USA, Inc.; Laredo Petroleum, Inc. and B.P. appeared at the hearing and Devon Energy Production Company, L.P. filed a Closing Statement and a Reply to Closing Statements. The Texas General Land Office appeared as an Interested Party and filed a Closing Statement. Numerous land and mineral owners appeared as Observers.

2. This hearing was called at the request of EOG to provide EOG the opportunity to demonstrate why its application for its proposed Klotzman (Allocation) Well No. 1H in the Eagleville (Eagle Ford-2) Field in DeWitt County, as an allocation well drilled on acreage from two leases, should be granted.

3. EOG proposes to drill its Klotzman (Allocation) Well No. 1H, a horizontal oil well, on an 80-acre drilling unit composed of 40 acres taken from the Georgia Dubose-Glassell 516.569-acre lease and 40 acres from the Georgia Dubose-Pierce 304.97-acre lease.

4. The Georgia Dubose-Glassell 516.569-acre lease and the adjacent Georgia Dubose-Pierce 304.97-acre lease do not convey pooling authority for oil. The authority to pool for oil, as to those leases, is a retained property interest owned by the Klotzmans.

5. The Georgia Dubose-Pierce 304.97-acre lease does convey pooling authority for gas.

6. EOG asserts that it is not necessary that it have pooling authority for oil in order to form an "allocation" well 80-acre drilling unit composed of a 40-acre tract from the Georgia Dubose-Glassell 516.569-acre lease combined with a 40-acre tract from the Georgia Dubose-Pierce 304.97-acre lease.

7. As authority for the grant of a permit for its applied-for Klotzman (Allocation) Well No. 1H without pooling authority, EOG cites an April 21, 2010 letter written by Colin Lineberry, who was Director of the Commission's Hearings Section at that time.

   a. Mr. Lineberry was, and is, a member of the Commission staff.

   b. Commission staff members do not speak for the Commission. Mr. Lineberry's letter contained a final paragraph which stated: "This letter reflects the opinion of the undersigned, based on my understanding of relevant statutes, case law, Commission rules and current Commission policy and procedure. The statements in this letter are not, and should not be construed as, a final opinion or decision of the Railroad

Commission.

c. Only a majority of the three elected Commissioners speak definitively for the Commission.

8. The April 21, 2010 Lineberry letter removed the regulatory bar to the grant of a specific well permit: Devon's Taylor-Abney-Obanion (Allocation) Well No. 1H in the Carthage (Haynesville) Field, in Harrison County.

a. The April 21, 2010 Lineberry letter stated, "I have reviewed the referenced W-1 and, based on information submitted and particularly the representation by the applicant that it holds leases covering 100% of each tract traversed by the wellbore and that there are no unleased interests within 330 feet of any point on the wellbore, it appears that applicant has met the minimal good faith claim standard necessary for issuance of a permit. (emphasis added)

b. The Production Sharing Description attached to the Devon Form W-1 indicated the well traversed the W.B. Taylor "A" Unit, the C.M. Abney "A" Unit and the O'Banion Unit. The application concerned three existing pooled units

c. Under Texas law, pooled units can only be validly formed from leases containing pooling authority.

9. EOG's application for the Klotzman (Allocation) Well No. 1H does not fall within the minimal good faith claim standard of the Lineberry letter of April 21, 2010 as the EOG leases do not contain pooling authority for oil.

10. There is no Texas statute, Commission Statewide Rule or Commission Final Order authorizing the permitting of "allocation" wells.

a. There is no Commission Form on which to apply for "allocation" well permits.

b. All applications for "allocation" wells have been filed on a Form PSA-12, a form adopted by the Commission effective September, 2011, which is intended for Production Sharing Agreement well permits.

11. EOG agrees with the Klotzmans that the Georgia Dubose-Glassell 516.569-acre lease and the adjacent Georgia Dubose-Pierce 304.97-acre lease do not convey pooling authority for oil.

12. Regardless of how it is denominated, combining a 40-acre tract from the Georgia Dubose-Glassell 516.569-acre lease with a 40-acre tract from the Georgia Dubose-Pierce 304.97-acre lease to form an 80-acre drilling unit for the purpose of drilling a well would be pooling the

tracts.

a. "Pooling occurs when tracts from two or more leases are combined for the purpose of drilling a single well." 1 SMITH & WEAVER, TEXAS LAW OF OIL AND GAS, §4.8 (Matthew Bender & Company, 2012).

b. "Pooling, or a pooled unit, will describe the joining together of small tracts or portions of tracts for the purpose of having sufficient acreage to receive a well drilling permit under the relevant state or local spacing laws and regulations..." 1 BRUCE M. KRAMER & PATRICK H. MARTIN, THE LAW OF POOLING AND UNITIZATION, §1.02 (Matthew Bender & Company, 2012).

c. "Although the terms "pooling" and "unitization" are frequently used interchangeably, more properly "pooling" means the bringing together of small tracts sufficient for the granting of a well permit under applicable spacing rules..." WILLIAMS AND MEYERS (ABRIDGED), OIL AND GAS LAW §901 (Matthew Bender & Company, 1975).

13. EOG's actions in combining a 40-acre tract from the Georgia Dubose-Glassell 516.569-acre lease with a 40-acre tract from the Georgia Dubose-Pierce 304.97-acre lease to form an 80-acre drilling unit are the very definition of pooling.

14. The Texas Railroad Commission has no authority to pool lands from leases that lack pooling authority.

a. "...the acts of the Railroad Commission cannot be said to operate effectively to extend the restrictive terms of a lease. The orders of the Railroad Commission cannot compel pooling agreements that the parties themselves do not agree upon. The Railroad Commission has no power to determine property rights." Jones v. Killingsworth, 403 S.W.2d 325, 328 (Tex. 1966) (emphasis added). See also Ryan Consolidated Petroleum Corp. v. Pickens, 285 S.W.2d 201 (Tex. 1955); Magnolia Petroleum Co. v. Railroad Commission, 170 S.W.2d 189 (Tex 1943); Nale v. Carroll, 289 S.W.2d 743, Tex. 1956).

b. "It is thought to be fundamental that the rules and regulations of the Railroad Commission cannot have the result of effecting a change or transference of property rights" Whelan v. Placid Oil, 273 S.W.2d 125, 130 (Tex. Civ. App. - Texarkana, 1954, writ ref'd n.r.e.), citing Mueller v. Sutherland, 179 S.W.2d 801, 808 (Tex. Civ. App. - El Paso 1943, writ ref'd w.o.m.).

c. The Commission's grant of allocation well permit applications that combine acreage from separate leases, in instances in which leases do not provide for pooling authority, would be contrary to the decisions in Jones v. Killingsworth, supra, and Whelan v. Placid Oil, supra.

15. Lacking pooling authority in its Georgia Dubose leases, EOG does not have "...all necessary real property and contractual rights to drill and produce the applied-for well and the legal right to develop and produce the minerals under all acreage assigned to the well."

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to all persons legally entitled to notice.

2. All things have occurred and been accomplished to give the Commission jurisdiction to decide this matter.

3. "Absent the use of the Mineral Interest Pooling Act, a lessee has no power to pool the leased estate with other land unless the lessor has expressly authorized it to do so. Similarly, it has no power to pool any mineral interest owned by the lessor except the interest covered by the pooling clause." 1 SMITH & WEAVER, TEXAS LAW OF OIL AND GAS, §4.8(B)(2) (Matthew Bender & Company, 2012).

4. "A lessee's authority to pool is derived solely from the terms of the lease; a lessee has no power to pool absent express authority." Browning Oil Co., Inc. v. Luecke, 38 S.W.3d 625, 634 (Tex. App. - Austin, 2000, pet. denied).

5. EOG does not have a good faith claim to drill its proposed Klotzman (Allocation) Well No. 1H on an 80-acre drilling unit composed of 40 acres from the Georgia Dubose-Glassell 516.569-acre lease and 40 acres from the Georgia Dubose-Pierce 304.97-acre lease.

6. EOG's application to drill its proposed Klotzman (Allocation) Well No. 1H should be dismissed.

RECOMMENDATION

The examiners recommend that EOG's application to drill its proposed Klotzman (Allocation) Well No. 1H (Status No. 744730) in the Eagleville (Eagle Ford-2) Field, DeWitt County, be DISMISSED for lack of a good faith claim to pool acreage and drill the proposed well across a common leaseline.

Richard Atkins
Technical Examiner

Marshall Enquist
Hearings Examiner

EXHIBIT I
Oil & Gas Docket No. 02-0278952
2 pages

VICTOR G. CARRILLO, *CHAIRMAN*
ELIZABETH A. JONES, *COMMISSIONER*
MICHAEL L. WILLIAMS, *COMMISSIONER*

LINDIL C. FOWLER, JR., *GENERAL COUNSEL*
COLIN K. LINEBERRY, *DIRECTOR*
HEARINGS SECTION

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

April 21, 2010

Mr. Brian Sullivan
McElroy, Sullivan & Miller, LLP
P.O. Box 12127
Austin, Texas 78711

Re: W-1 of Devon Energy Production Co. L.P. ("applicant") for its proposed Well No. 1H, Taylor-Abney-Obanion (allocation) Unit, Carthage (Haynesville Shale) Field, Harrison County, Texas (RRC Status #692453).

Dear Mr. Sullivan:

I have reviewed the referenced W-1 and, based on information submitted and particularly the representation by applicant that it holds leases covering 100% of each tract traversed by the wellbore and that there are no unleased interests within 330 feet of any point on the wellbore, it appears that applicant has met the minimal good faith claim standard necessary for issuance of a permit.

The Commission expresses no opinion as to whether the leases alone confer the right to drill across lease lines as contended by applicant or whether a pooling agreement or production sharing agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdiction it appears that a 100% interest in each of the leases is a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commission requirements.

Issuance of the permit is also not an endorsement or approval of the applicant's stated method of allocating production proceeds among component leases or units. All production must be reported to the Commission as production from the lease on which the wellhead is located and reported production volume must be determined by actual measurement of hydrocarbon volumes prior to leaving that lease and may not be based on allocation or estimation. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisdiction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction.

For the foregoing reasons, I am returning the application to the Permitting Section for processing with the notation that the applicant has made a sufficient showing of a good faith claim to the right to produce the minerals under the proposed unit such that the good faith claim issue does not bar issuance of a permit.

This letter reflects the opinion of the undersigned, based on my understanding of relevant statutes, case law, Commission rules and current Commission policy and procedure. The statements in this letter are not, and should not be construed as, a final opinion or decision of the Railroad Commission.

Sincerely,

Colin K. Lineberry, Director
Office of General Counsel
Hearings Section

cc: Lorenzo Garza
RRC Drilling Permits

API No.

Application Status # 744730

SWR Exception Case/Docket No.

RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION

APPLICATION FOR PERMIT TO DRILL, RECOMPLETE, OR RE-ENTER

This facsimile W-1 was generated electronically from data submitted to the RRC. A certification of the automated data is available in the RRC's Austin office.

FORM W-1 07/2004

Permit Status: As Submitted

The RRC has not approved this application. Duplication or distribution of information is at the user's own risk.

1. RRC Operator No.	2. Operator's Name (as shown on form P-5, Organization Report)	3. Operator Address (include street, city, state, zip):
253162	EOG RESOURCES, INC.	ATTN SHAREEN NASH P O BOX 4362 HOUSTON, TX 77210

4. Lease Name	5. Well No.
KLOTZMAN (ALLOCATION)	1H

GENERAL INFORMATION

6. Purpose of filing (mark ALL appropriate boxes): ☒ New Drill ☐ Recompletion ☐ Reclass ☐ Field Transfer ☐ Re-Enter ☐ Amended ☐ Amended as Drilled (BHL) (Also File Form W-1D)

7. Wellbore Profile (mark ALL appropriate boxes): ☐ Vertical ☒ Horizontal (Also File Form W-1H) ☐ Directional (Also File Form W-1D) ☐ Sidetrack

8. Total Depth: 11600

9. Do you have the right to develop the minerals under any right-of-way ? ☒ Yes ☐ No

10. Is this well subject to Statewide Rule 36 (hydrogen sulfide area)? ☒ Yes ☐ No

SURFACE LOCATION AND ACREAGE INFORMATION

11. RRC District No.: 02

12. County: DE WITT

13. Surface Location ☒ Land ☐ Bay/Estuary ☐ Inland Waterway ☐ Offshore

14. This well is to be located 7.2 miles in a SW direction from WESTHOFF which is the nearest town in the county of the well site.

15. Section	16. Block	17. Survey	18. Abstract No.	19. Distance to nearest lease line:	20. Number of contiguous acres in lease, pooled unit, or unitized tract:
		BAKER, I	A-89	1 ft.	821.54

21. Lease Perpendiculars: 2253 ft from the SE line and 1257 ft from the SW line.

22. Survey Perpendiculars: 909 ft from the NW line and 1257 ft from the SW line.

23. Is this a pooled unit? ☐ Yes ☒ No

24. Unitization Docket No:

25. Are you applying for Substandard Acreage Field? ☐ Yes (attach Form W-1A) ☒ No

FIELD INFORMATION List all fields of anticipated completion including Wildcat. List one zone per line.

26. RRC District No.	27. Field No.	28. Field Name (exactly as shown in RRC records)	29. Well Type	30. Completion Depth	31. Distance to Nearest Well in this Reservoir	32. Number of Wells on this lease in this Reservoir
02	27135750	EAGLEVILLE (EAGLE FORD-2)	Oil or Gas Well	11600	689.00	2

BOTTOMHOLE LOCATION INFORMATION is required for DIRECTIONAL, HORIZONTAL, AND AMENDED AS DRILLED PERMIT APPLICATIONS (see W-1H attachment)

Remarks

[FILER Jul 16, 2012 1:44 PM]: THIS IS AN ALLOCATION WELL WITH 2 LEASES. INTERNAL RULE 37 (1) REQUIRED AND APPLICANT IS OWN OFFSET BETWEEN THESE 2 LEASES. SHOULD THESE LEASES BE POOLED AT A FUTURE DATE, EOG RESOURCES WILL FILE A FORM P-12 TO REFLECT THE POOLING. SEE PSA-12, ADDITIONAL COMMENTS AND ATTACHMENTS. EXPEDITED ADMINSTRATIVE REVIEW & APPROVAL REQUESTED. THANK YOU.

Certificate:

I certify that information stated in this application is true and complete, to the best of my knowledge.

Tom Douglass — Name of filer

Jul 16, 2012 — Date submitted

(512)4956300 — Phone

tdouglass@scottdoug.com — E-mail Address (OPTIONAL)

RRC Use Only Data Validation Time Stamp: Jul 16, 2012 1:48 PM('As Submitted' Version)

EOG Resources, Inc. Exh. 1
O & G Docket No. 02-0278952
December 3, 2012

EXHIBIT II
Oil & Gas Docket No. 02-0278952
8 pages

Permit Status: As Submitted

The RRC has not approved this application. Duplication or distribution of information is at the user's own risk.

RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION

Form W-1H 07/2004
Supplemental Horizontal Well Information

APPLICATION FOR PERMIT TO DRILL, RECOMPLETE, OR RE-ENTER

This facsimile W-1 was generated electronically from data submitted to the RRC. A certification of the automated data is available in the RRC's Austin office.

Status # 744730

Approved Date:

1. RRC Operator No.	2. Operator's Name (exactly as shown on form P-5, Organization Report)	3. Lease Name	4. Well No.
253162	EOG RESOURCES, INC.	KLOTZMAN (ALLOCATION)	1H

Lateral Drainhole Location Information

5. Field as shown on Form W-1: EAGLEVILLE (EAGLE FORD-2) (Field # 27135750, RRC District 02)

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL
		HUMPHREY, J	266	GONZALES

11. Terminus Lease Line Perpendiculars
821 ft. from the NE line. and 2155 ft. from the SE line

12. Terminus Survey Line Perpendiculars
2155 ft. from the SE line. and 6775 ft. from the SW line

13. Penetration Point Lease Line Perpendiculars
1464 ft. from the SW line. and 2462 ft. from the SE line

W-1 Remarks continued

Attachment to Form W-1 Application
To the Railroad Commission of Texas

Klotzman (Allocation) Well #1H
Eagleville (Eagle Ford-2) Field
DeWitt County, Texas
By
EOG Resources, Inc.

Additional Comments:

This well will be drilled across two leases.

Description of the Acres and Acreage Allocation to Wells:

Each lease comprising the drilling unit for this well will contribute some acreage for allocation purposes to the **Klotzman (Allocation) Well #1H.**

The Georgia Dubose, et ux, to Alfred Glassell, Jr., et al, Lease has 516.569 acres. There is one well applied for or completed in the Eagleville (Eagle Ford-2) Field on this lease, which is the Reilly #1H. (See Attachment "A").

The Georgia Dubose, et al, to Austin P Peirce, Jr., Lease has 304.97 acres. There are currently no wells applied for or completed in the Eagleville (Eagle Ford-2) Field on this lease. (See Attachment "B").

This will be the first Allocation well applied for/completed at this time on the Georgia Dubose, et al, to Austin P Peirce, Jr., Lease and on the Georgia Dubose, et ux, to Alfred Glassell, Jr., et al, Lease in the Eagleville (Eagle Ford-2) Field. (See Attachments "A" and "B").

Acreage will be allocated to the Klotzman (Allocation) Well #1H in the Eagleville (Eagle Ford-2) Field in compliance with the Eagleville (Eagle Ford-2) Field rules and statewide rules, including Statewide Rule 86. It is possible that additional lease or allocation wells may be proposed in the future. The combination of lease and allocation wells on the leases involved will not exceed the density requirements set out in the Eagleville (Eagle Ford-2) Field rules without seeking a density exception pursuant to Rule 38. The appropriate Railroad Commission forms will be filed to reflect the allocation of acreage in compliance with Rule 40. There will be no double assignment of acreage.

The Klotzman (Allocation) Well #1H well bore is not a Rule 37 distance to external lease lines. The well bore will not be closer than the applicable lease line spacing distance to any external lease line. The field rules for the Eagleville (Eagle Ford-2) Field have take point provisions. The first and last take points are different from the penetration and terminus points. The first take point is 2566 feet from the SEL and 1586 feet from the SWL of the Georgia Dubose, et al, to Austin P Peirce, Jr., Lease. The last take point is 2107 feet from the SEL and 920 feet from the North line of the Georgia Dubose, et ux, to Alfred Glassell, Jr., et al, Lease. The lease line spacing rule is 100 feet/330 feet in this field.

With respect to survey lines, the first take point is located 1586 feet from the SWL and 2566 feet from the SEL of the I. Baker Survey, A-89. The last take point is located 920 feet from the NEL and 2107 feet from the SEL line of the J. Humphrey Survey, A-266.

The Klotzman (Allocation) #1H well bore will cross internal lease lines. Therefore, a Rule 37 exception is requested. EOG Resources, Inc., ("EOG") is the operator of each of the leases involved in this application pursuant to authority in the oil and gas leases. EOG has all necessary real property and contractual rights to drill and produce the applied-for well and the legal right to develop and produce the minerals under all acreage assigned to the well. As the operator of tracts that offset the internal lease lines to be crossed, EOG waives notice pursuant to SWR 37(h)(2)(B).

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division

READ INSTRUCTIONS ON BACK

PRODUCTION SHARING AGREEMENT CODE SHEET

Form PSA-12
(Rev. 09/2011)

1. FIELD NAME(S)	2. LEASE / ID NO. (If assigned)	3. RRC District No.
Eagleville (Eagle Ford – 2)		2
4. OPERATOR P-5 NAME	5. OPERATOR P-5 NO.	6. WELL NO.
EOG Resources, Inc.	253162	1H
7. SHARING AGREEMENT NAME	8. API NO.	9. PURPOSE OF FILING
Klotzman (Allocation)		X Drilling Permit Application (Form W-1)
10. COUNTY	11. TOTAL ACRES	☐ Completion Report
DeWitt	821.539	

Description of Individual Tracts Contained Within the Production Sharing Agreement

TRACT/PLAT IDENTIFIER	TRACT NAME	ACRES IN TRACT	ACREAGE ALLOCATED TO WELL	INDICATE UNDIVIDED INTERESTS		
				UNLEASED	NOT-PARTICIPATING	NON-POOLED
1	Georgia Dubose/Glassell	516.559	40			
*2	Georgia Dubose/Pierce - 1	304.97	40			

REMARKS:

CERTIFICATION: I declare under penalties prescribed pursuant to §91.143, Tex. Nat. Res. Code, that this report was prepared by me or under my supervision or direction, that I am authorized to make this report, and that the information contained in this report is true, correct, and complete to the best of my knowledge.

Signature Richard Ryan Name (type/print) Richard Ryan

Title Land Advisor Date: 7-12-12 Phone No. 210/403-7836

Email Address (Optional – See instructions for important information): Richard_ryan@eogresources.com

W-1 Attachment "A"

Lease/Unit: Georgia Dubose/Glassell
Field. Eagleville (Eagle Ford – 2) Field
County: Gonzales

Total Beginning Acreage..... 516.569

Total Acreage Assigned to Lease Wells (Reilly #1H).....80.00

Acreage Assigned to Allocation Well:
Klotzman (Allocation) #1H.....40.00

Less Total Acres Assigned..... (120.00)

Remaining Acres..... 396.569

W-1 Attachment "B"

Lease/Unit: Georgia Dubose/Pierce -1
Field: Eagleville (Eagle Ford – 2) Field
County: Gonzales

Total Beginning Acreage..... 304.97

Total Acreage Assigned to Lease Wells.....0.00

Acreage Assigned to Allocation Well:
Klotzman (Allocation) #1H.....40.00

Less Total Acres Assigned..... (40.00)

Ending..... 264.97

TOPOGRAPHIC

SURVEYING • MAPPING • GIS • GPS
1400 EVERMAN PARKWAY, Ste. 197 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
WWW.TOPOGRAPHIC.COM

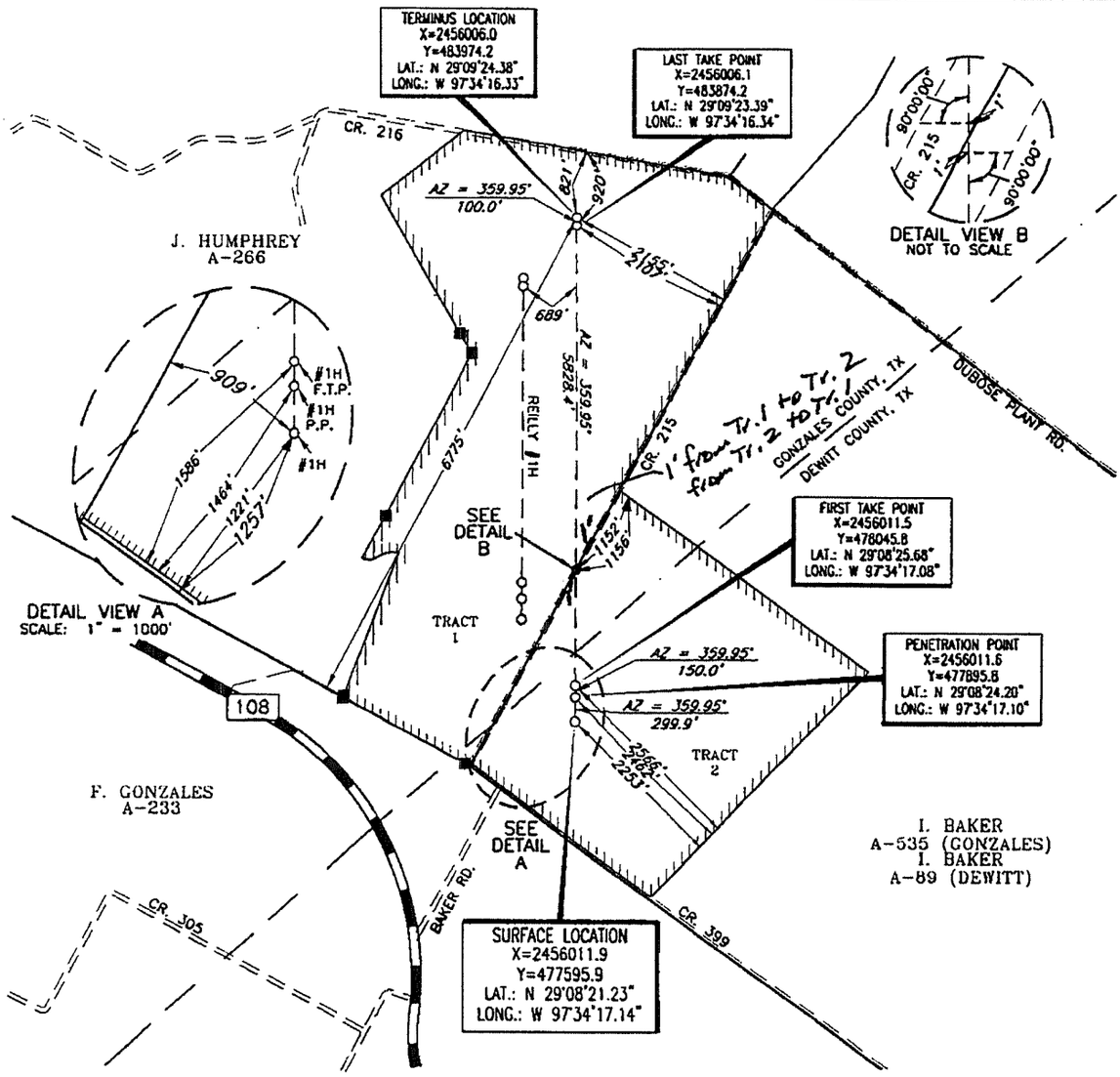
DEWITT COUNTY, TEXAS
SURVEY

S.H.L.	1221' FSWL 2253' FSEL	I. BAKER, A-89 909' FNWL & 1257' FSWL
P.P.	1464' FSWL 2462' FSEL	I. BAKER, A-89
F.T.P.	1586' FSWL 2586' FSEL	I. BAKER, A-89
L.T.P.	920' FNEL 2107' FSEL	J. HUMPHREY, A-266
T.H.L.	821' FNEL 2155' FSEL	J. HUMPHREY, A-266 6775' FSWL & 2155' FSEL

LEGEND

- SURVEY LINE
- HIGHWAY
- ROAD WAY
- FENCE POST/CORNER

#	MINERAL OWNER	ACREAGE
1	GEORGIA DUBOSE/GLASSELL	517.10
2	GEORGIA DUBOSE/PIERCE-1	304.67
	TOTAL ACREAGE	821.77



ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREON ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE OF THE NORTH AMERICAN DATUM 1927, U.S. SURVEY FEET

SCALE: 1" = 2000'
0' 1000' 2000'

THIS LOCATION AND BOUNDARY HAS BEEN CAREFULLY SURVEYED ON THE GROUND UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE ACCORDING TO THE EVIDENCE, CITED, SURVEY RECORDS, MAPS, AND OTHER DATA PROVIDED BY EOG RESOURCES, INC. THIS PLAT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE RAILROAD COMMISSION OF TEXAS AND SHOULD NOT BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THIS CERTIFICATION IS MADE AND LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS SURVEY AND IS NON-TRANSFERABLE.
** THIS SURVEY IS CLEARED FOR THIS DIRECTION ONLY **

ORIGINAL DOCUMENT SIZE: 8.5" X 14"

eog resources, inc.

LEASE NAME & WELL NO.: KLOTZMAN (ALLOCATION) # 1H

DATE OF SURVEY: FEBRUARY 29, 2012

LOCATED: ±7.2 MILES SOUTHWEST OF WESTHOFF, TX

GROUND ELEVATION: 351'

STATE OF TEXAS
REGISTERED
PATRICK A. FOX
5069
PROFESSIONAL
LAND SURVEYOR

FILE NAME LO_KLOTZMANUNIT1H_REV2
J.S.T.

CERTIFICATION:

I, PATRICK A. FOX, A REGISTERED PROFESSIONAL LAND SURVEYOR, AND AN AUTHORIZED AGENT OF TOPOGRAPHIC LAND SURVEYORS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED "PRE-CONSTRUCTION" PROPOSED WELL LOCATION WAS SURVEYED AND STAKED ON THE GROUND AS SHOWN HEREIN.

TEXAS REG. NO. 5069

EXHIBIT III
Oil & Gas Docket No. 02-0278952
2 pages

RRC ONLINE SYSTEM

Oil & Gas Data Query

Query Menu Help

Form W-1

To Print Directional or Horizontal Wellbore Information use (View W-1D or W-1H) links. Return

Status #: 711168 - 98 **API #:** 365-37734	**Operator:** 216378 - DEVON ENERGY PRODUCTION CO, L.P. **Issued:** 05/19/2011, **Filed:** Online	**Lease Name:** MCRAE-HAYGOOD ALLOCATION UNIT **Well #:** 12H, **District:** 06, **County:** PANOLA	**Filing Purpose:** New Drill **Wellbore Profiles:** Horizontal

Commission Staff expresses no opinion as to whether a 100% ownership interest in each of the leases alone or in combination with a "production sharing agreement" confers the right to drill across lease/unit lines or whether a pooling agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdiction it appears that a 100% interest in each of the leases and a production sharing agreement constitute a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commission requirements. Issuance of the permit is not an endorsement or approval of the applicant?s stated method of allocating production proceeds among component leases or units. All production must be reported to the Commission as production from the lease or pooled unit on which the wellhead is located and reported production volume must be determined by actual measurement of hydrocarbon volumes prior to leaving that tract and may not be based on allocation or estimation. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisdiction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction. The foregoing statements are not, and should not be construed as, a final opinion or decision of the Railroad Commission. (05/18/2011 02:44:55 PM)

Status: Approved View Current W-1 View Current W-1H View Current Permit

Completion Information

Well Status Code	Spud Date	Drilling Completed	Surface Casing Date
-	04/04/2011		04/05/2011

General / Location Information

Basic Information:

Filing Purpose	Wellbore Profiles	Lease Name	Well #	SWR	Total Depth
New Drill	Horizontal	MCRAE-HAYGOOD ALLOCATION UNIT	12H	SWR 37 Lease Line	12500

Surface Location Information:

API #	Distance from Nearest Town	Direction from Nearest Town	Nearest Town	Surface Location Type
365-37734	8.0 miles	SW	Carthage	Land

Survey/Legal Location Information:

Section	Block	Survey	Abstract #	County
		DAVIS, J	162	PANOLA

Perpendicular surface location from two nearest designated lines:

Perpendiculars	Distance	Direction	Distance	Direction
Survey Perpendiculars	264.0 feet	S'LY	3110.0 feet	W'LY

Permit Restrictions:

Code	Description
29	NO ALLOWABLE WILL BE ASSIGNED UNTIL ACREAGE HAS BEEN RE-ASSIGNED FROM THE BLANCHE McRAE UNIT AND THE LOIS HAYGOOD UNIT TO ALLOW FOR THE COMPLETION OF THIS WELL.

Fields

District	Field Name	Field #	Completion Depth	Lease Name	Well #	Well Type	Acres	Distance to nearest well	Distance to nearest Lease Line	SWR	Pooled/Unitized
06	CARTHAGE (COTTON VALLEY) **Primary Field**	16032174	10000	MCRAE-HAYGOOD ALLOCATION UNIT	12H	Oil or Gas Well	1375.03	433.0 feet	1.0 feet	SWR 37 Lease Line	Y

Perpendiculars	Distance	Direction	Distance	Direction
Surface Lease Lines	264.0 feet	S'LY	833.0 feet	E'LY

Section: **Block:** **Survey:** DAVIS, J

Abstract #: 162 **County:** PANOLA

Name	Profile		Distance	Direction	Distance	Direction
TH1	Terminus Point	Lease	2998.0 feet	from the N'LY line and	899.0 feet	from the E'LY line
		Survey	3620.0 feet	from the N'LY line and	3460.0 feet	from the W'LY line
	Last Take Point	Lease	feet	from the line and	feet	from the line
	First Take Point	Lease	feet	from the line and	feet	from the line

Penetration Point	Lease	672.0 feet	from the S'LY line and	380.0 feet	from the E'LY line	

Exceptions

Field	Exception	Case Docket Number
CARTHAGE (COTTON VALLEY)	SWR 37 Lease Line	0269622

Comments

Remark	Date Entered	Entered By
Amended to correct survey name only. All other information is the same.	05/11/2011 08:37:01 AM	FILER
Commission Staff expresses no opinion as to whether a 100% ownership interest in each of the leases alone or in combination with a "production sharing agreement" confers the right to drill across lease/unit lines or whether a pooling agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdiction it appears that a 100% interest in each of the leases and a production sharing agreement constitute a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commission requirements. Issuance of the permit is not an endorsement or approval of the applicant?s stated method of allocating production proceeds among component leases or units. All production must be reported to the Commission as production from the lease or pooled unit on which the wellhead is located and reported production volume must be determined by actual measurement of hydrocarbon volumes prior to leaving that tract and may not be based on allocation or estimation. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisdiction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction. The foregoing statements are not, and should not be construed as, a final opinion or decision of the Railroad Commission.	05/18/2011 02:44:55 PM	RRC STAFF

Attachments

Attachment Type	File Path	Associated Fields and/or Plats
P-12	McRae-Haygood Alloc 12H PSA.tif	rev711168plat pg1.tif
PLAT #1 (Paper Size: LGL)	rev711168plat pg1.tif	CARTHAGE (COTTON VALLEY)
PLAT #2 (Paper Size: LGL)	rev711168plat pg2.tif	CARTHAGE (COTTON VALLEY)
Other	McRae-Haygood Alloc 12H Remarks Page 1.tif	
Other	McRae-Haygood Alloc 12H Remarks Page 2.tif	
Other	McRae-Haygood Alloc 12H W-1 Attach A.tif	
As Submitted W-1	AsSubmittedW1-5-11-2011.pdf	
As Approved W-1	AsApprovedW1-5-19-2011.pdf	
As Approved Permit	AsApprovedPermit-5-19-2011.pdf	

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RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS SECTION

OIL AND GAS DOCKET NO. 02-0278952

APPLICATION OF EOG RESOURCES, INC. FOR ITS KLOTZMAN LEASE (ALLOCATION) WELL NO. 1H (STATUS NO. 744730), EAGLEVILLE (EAGLE-FORD-2) FIELD, DEWITT COUNTY, AS AN ALLOCATION WELL DRILLED ON ACREAGE ASSIGNED FROM TWO LEASES.

FINAL ORDER

The Commission finds that after statutory notice in the above-numbered docket heard on December 3, 2012, the presiding examiners have made and filed a report and proposal for decision containing findings of fact and conclusions of law and that this proceeding was duly submitted to the Railroad Commission of Texas at conference held in its offices in Austin, Texas.

The Commission, after review and due consideration of the examiners' report and proposal for decision, the findings of fact and conclusions of law contained therein, and any exceptions and replies filed thereto, hereby adopts as its own the Findings of Fact and Conclusions of Law contained therein, and incorporates said Findings of Fact and Conclusions of Law as if fully set out and separately stated herein.

Therefore, it is **ORDERED** by the Railroad Commission of Texas that this docket is hereby **DISMISSED**.

Each exception to the examiners' proposal for decision not expressly granted herein is **OVERRULED**. All requested findings of fact and conclusions of law which are not expressly adopted herein are **DENIED**. All pending motions and requests for relief not previously granted or granted herein are **DENIED**.

This order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

Done this ___th day of _____, 2013.

RAILROAD COMMISSION OF TEXAS

_____

CHAIRMAN BARRY T. SMITHERMAN

_____

COMMISSIONER DAVID PORTER

_____

COMMISSIONER CHRISTI CRADDICK

ATTEST:

_____

SECRETARY